

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 56 OF 2005

MRS. JOANA FRANCISCO ERRIE B.
GOMES BARRETO MASCARENHAS AND 4
ORS.,

....Appellants

Versus

STATE OF GOA REP.BY THE CHIEF
SECRETARY AND ANR.,

....Respondents

Shri M. B. D'Costa, Senior Counsel with J. A. Lobo for the Appellants

Coram:- D. D. SINHA, J.

Date:- 6th December, 2005

P.C.

Heard Shri M. B. D'Costa, learned Senior Counsel for the appellants.

The learned Senior Counsel states that the appellants are original plaintiff in the Regular Civil Suit No. 241/04. During the pendency of the suit, the petitioners have moved the application for temporary injunction, which was dismissed by the Trial Court while order dated 12.07.2005, which is impugned in the present Appeal From Order, on the ground that this Court passed an interim order dated 06.02.2004 in Writ Petition No. 658/2003, whereby the present appellants/applicants (plaintiffs) were restrained from changing the nature of the suit land under survey no. 94/1 or doing any plantation or any other cultivation in the property under survey no. 94/1. The learned Counsel therefore contended that the Order impugned whereby the application for temporary injunction came to be dismissed by the Trial Court, is only in view of the interim order passed by this Court in the above Writ Petition and, therefore, seeks permission to withdraw the present From Order with liberty to revive the request of grant of temporary injunction before the Trial Court, after either the Writ Petition

is dismissed or disposed of.

In the backdrop of the above referred fact and after perusal of the impugned order, it is evident that the application for temporary injunction moved by the appellant/plaintiff came to be dismissed only in view of the above interim relief order passed by this Court and not on merits and, therefore, the Appeal From Order is dismissed as withdrawn with liberty as prayed for to revive his request for grant of temporary injunction before the Trial Court, after the above Writ Petition is dismissed since the impugned order is not based on merits of the matter and purely based on existence on interim order passed by this Court in the above referred Writ Petition. Liberty is given to the appellants to revive his request for consideration of grant of temporary injunction before the Trial Court. The Order impugned dated 12.07.2005, passed by the Trial Court shall not come in way of the Trial Court to reconsider the request of the petitioner for grant of temporary injunction. Since, this Court has not decided anything on merit and left it to the Trial Court to consider the claim of temporary injunction, afresh, in the above mentioned contingency, it is not necessary in the present Appeal From Order to issue notice to the respondents particularly when there is no prejudice as such, would be caused to the respondents by the present Order, since the respondents shall get adequate opportunity to put forth his case on merit at the time of reconsideration of prayer of the petitioner, if made, in the contingency mentioned herein above for grant of temporary injunction.

With these observations and directions, Appeal From Order is disposed of.

D. D. SINHA, J.

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